IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 13, 2005 Session

NICKELL, INC. v. NICK PSILLAS, ET AL.

Appeal from the Circuit Court for Maury County
No. 9169 Jim T. Hamilton, Judge

No. M2004-02975-COA-R3-CV - Filed on June 30, 2006

The trial court found venue on a contract claim resided in plaintiff's county on the theory that venue in an action to collect a debt is in the creditor's county. We reverse.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR. P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

R. Francene Kavin, Brentwood, Tennessee, for the appellants, Nick Psillas, et al.

Thomas W. Hardin, Patrick M. Carter, for the appellee, Nickell, Inc.

OPINION

This action was initiated in June of 2000 when Nickell, Inc. ("Nickell"), a paving contractor, filed a complaint against Nick Psillas,[1] Steeplechase Partnership I, LLC ("Steeplechase"),[2] and Continental Development and Construction, Inc. ("Continental") in Maury County, characterizing the action as one on a sworn account pursuant to Tenn. Code Ann. § 24-5-107. Mr. Psillas and the defendant companies associated with him develop residential subdivisions. The defendants shall collectively be referred to herein as "Developers."

Nickell alleged in the original complaint that as a "result of materials sold, paving completed, and related services" Developers were "indebted" to Nickell for $58,219.20 as a result of Nickell's

---

[1]The complaint alleged Mr. Psillas was doing business as "Prestige Homes."

[2]The complaint alleged that Steeplechase was also known as "Rogersshire Partnership, LLC." The original pleadings misspelled "Rogershire." We will refer to it with the unusual yet correct spelling of "Rogersshire."

work on Developers' Rogersshire project. The record does not contain an affidavit to support the sworn account on the original complaint, but Developers, nevertheless, filed a sworn denial.

Developers filed a motion to dismiss based on improper venue under Tenn. R. Civ. P. 12.02(3) citing the fact that the Developers are located and all the work was performed in Williamson County. The trial court denied Developers' motion, finding venue to be proper in Maury County.

In September of 2003, Nickell filed its Amended and Restated Complaint ("Amended Complaint") whereby Nickell added two (2) grounds of recovery and sought to recover for work on another project (the Churchill project) in addition to the Rogersshire project included in the original complaint. The Amended Complaint alleged that in April of 1997, the parties entered into a contract for Nickell to provide paving and related services for Developers on the Churchill project. It is likewise alleged that later, in December, they entered into a contract for Nickell to do the same work on the Rogersshire project. Both projects are in Williamson County.

The first count of the Amended Complaint characterizes the amounts allegedly due Nickell for work on these contracts as "accounts" and seeks to recover on Sworn Account. As such, Nickell claims Developers are "indebted" $58,219.20 on the Rogersshire project "representing the balance of [Developers'] account with Nickell." Nickell alleges it is owed $13,024.79 on the Churchill project for the same reason. Alternatively, under count two of the Amended Complaint, Nickell claims it is entitled to unspecified damages for breach of Developers' obligation to pay for goods and services delivered by Nickell. Finally, as its third count, Nickell claims it is entitled to recover under unjust enrichment/quantum meruit.

The Answer filed by Developers denied that Nickell was entitled to recover additional payment and contained a counter complaint against Nickell seeking to recover $109,288 that Nickell was allegedly overpaid.

While the record does not reflect that Developers filed a second motion to dismiss the Amended Complaint for improper venue, the venue issue was raised in its Answer to the Amended Complaint. The court held a hearing in June of 2004 on the merits of Nickell's claims in which the trial court also considered the issue of venue.

The trial court on June 29, 2004 issued its order addressing both venue and the merits of the suit. As a preliminary matter, the trial court found that venue was proper in Maury County:

> Venue is proper in Maury County, Tennessee because the gravamen of Nickell, Inc.'s action is to collect a debt from the Defendants. The cause of action thus accrued in Maury County [Nickell's residence] where the [Developers'] default in payment occurred.

With regard to the Rogersshire project, the trial court awarded Nickell $58,219.20 against Mr. Psillas personally, Rogersshire, and Continental, plus prejudgment interest since the date of the original

complaint. On the Churchill project, the trial court awarded Nickell $9,014.75 against Mr. Psillas personally, Steeplechase, and Continental, plus prejudgment interest since the date of the Amended Complaint.

Thereafter, Developers filed a motion for a new trial and/or to alter or amend which the trial court denied. The Developers appealed based upon several grounds, including that the trial court erred in failing to dismiss the matter for improper venue.

I. SCOPE OF REVIEW

We believe the determinative issue in this case is whether the trial court erred when it found venue in this case rested in Maury County. This issue is a question of law. Therefore, the scope of review is *de novo* with no presumption of correctness. *See Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

II. THE LAW OF VENUE IN TRANSITORY ACTIONS

It is not disputed that venue in this matter is controlled by Tenn. Code Ann. § 20-4-101 governing transitory actions.[3]

> In all civil actions of a transitory nature, unless venue is otherwise expressly provided for, the action may be brought in the county where the cause of action arose or in the county where the defendant resides or is found.

Tenn. Code Ann. § 20-4-101.

The oral and written contracts between the parties herein did not address venue, so it was not "otherwise expressly provided for" as allowed by Tenn. Code Ann. § 20-4-101. Maury County is not where the defendants, Developers in this case, reside or can be found. It is uncontradicted that all of the defendants reside or can be found in Williamson County. Therefore, our inquiry under Tenn. Code Ann. § 20-4-101 must focus on whether Maury County is "where the cause of action arose."

A prerequisite to determining where a cause of action arose for purposes of venue, is the identification of the cause of action itself. *Mid-South Milling Co. v. Loret Farms, Inc.*, 521 S.W.2d

[3] Actions are either local or transitory in nature, and the subject matter of the action determines its classification. *See generally, State ex rel Logan v. Graper*, 4 S.W.2d 955 (Tenn. Ct. App. 1927); *Burns v. Duncan*, 133 S.W.2d 1000 (Tenn. Ct. App. 1939). Transitory actions are those that could have risen anywhere. *Curtis v. Garrison*, 364 S.W.2d 933, 934 (Tenn. Ct. App. 1963). A transitory action is one for which the injury occurred to a subject not having an immovable location. *Five Star Express, Inc. v. Davis*, 866 S.W.2d 944, 945 fn1 (Tenn. Ct. App. 1993). An action based on contract is a transitory action. *Id*. By contrast, local actions refer to where the injury is to an immovable object such as real property. *Id*. *See TPC Facility Delivery Group, LLC v. Lindsey*, No. M2002-01909-COA-R3-CV, 2004 WL 193051 at *2 fn 1 (Tenn. Ct. App. Jan. 30, 2004).

586, 588 (Tenn. 1975); *Insituform of North America, Inc. v. Miller Instituform, Inc.*, 695 S.W.2d 198, 200 (Tenn. Ct. App. 1985).

Nickell argues that the cause of action arose in the county of Nickell's principal place of business, Maury County, since it arose out of Nickell's attempt to collect a debt - a debt owed in Maury County. Developers argue, on the other hand, that this lawsuit was a contract action and the cause of action arose in Williamson County, where all of the acts related to the contract occurred, including Nickell's performance. The trial court reasoned that since the claim was to collect a debt owed Nickell by Developers, then the cause of action arose in the county of Nickell's residence,[4] Maury County.

III. FACTS

On the Rogersshire project, a contract was introduced at the hearing that was signed both by Nickell and a representative of Developers. This "contract" is Nickell's bid to do the paving work at Rogersshire, accepted by Developers, for $49,164.40. Nickell, however, maintained that the paving work for Rogersshire actually cost $104,219.20 and after crediting Developers for payments made, Nickell was still owed $58,219.20. In other words, Nickell seeks $55,054.80 over its contract price for its work on Rogersshire. Nickell's proof at the hearing gave several reasons why the cost to perform the paving work at Rogersshire doubled. First, the president of Nickell admitted that Nickell made a mistake in preparing its bid and left out the cost of rock.[5] Second, there was some error in the linear feet quoted. Finally, Nickell pointed to the fact that there were problems with the site since the subgrade was too low requiring that Nickell add even more rock.[6]

When Nickell discovered it had omitted items from the contract, Nickell met with Developers on four separate occasions asking to be paid for the rock left out of its bid. All of these meetings occurred in Williamson County. Mr. Nickell testified that at the fourth meeting Developers agreed orally to pay for this item omitted from its bid. Developers denied such an agreement.

As for the Churchill project, any agreement between the parties was oral. The proof contains bids by Nickell to do work on the Churchill project, but the Developers did not approve these bids in writing. The proof introduced by Nickell at trial showed Nickell billed Developers $121,467.29 for the Churchill project, the Developers paid $112,452.50. As a result, Nickell claimed $9,014.75 was due.

Nickell's president testified that most of the time Nickell received payment from Developers for its work on these projects by picking up the check in Williamson County.

---

[4]Nickell is a corporation with its principal place of business in Maury County. For purpose of venue, the residence of a corporation is its principal place of business. *Five Star Express*, 866 S.W.2d at 950.

[5]Proof introduced by Nickell showed the cost of rock to be substantial - 2,513 tons costing $25,130.

[6]The rock needed to remedy the subgrade was relatively small according to Nickell's own proof - 313 tons.

IV. REVIEW OF AUTHORITY

For purposes of fixing venue, the question of where the cause of action arises to recover payments due under a contract for services rendered, as opposed to damages resulting from a breach, has proven to be a thorny issue.[7] In *Insituform of North America, supra*, this court discussed venue in the context of a suit to recover payment due under a contract. The plaintiff, whose principal office was in Shelby County, entered into a sublicense contract with defendant, whose principal office was in Rutherford County, whereby defendant was granted an exclusive license to a pipe lining process for Tennessee, Kentucky and part of Ohio. *Id*. at 199. As part of the agreement, plaintiff sold materials and rented equipment to defendant to be used in the pipe lining process. *Id*. The contract was silent on venue. It specified all notices to plaintiff were to be sent to its Shelby County office. Also, "all prices quoted by plaintiff to defendant were f.o.b. to plaintiff's factory in Memphis."[8] *Id*. An uncontradicted affidavit provided that all payments for the materials and equipment by defendant were to be made to plaintiff's Shelby County office. *Id*. at 200. Affidavits also showed that the contract was executed in Rutherford County. *Id*.

The plaintiff filed a two count complaint in Shelby County against the defendant on the sublicense agreement. The first count sought to recover $25,433.30 in past due and unpaid charges for materials and equipment. *Id*. at 199. In the second count, the plaintiff alleged breach of contract for defendant's failure to maintain a required minimum net worth and for defendant's failure to pay plaintiff an unspecified amount in royalties. *Id*.

Defendant filed a motion to dismiss based upon improper venue alleging that the cause of action did not arise in Shelby County. The trial court granted the dismissal based on venue. On appeal, both parties agreed the lawsuit was a transitory action governed by Tenn. Code Ann. § 20-4-101(a). *Id*. at 200. Since the agreement did not specify venue and the defendant did not reside in Shelby County, then venue was governed by the "county where the cause of action arose." *Id.*

The appellate court found that the the cause of action arose in the plaintiff/creditor's county under the following rationale:

> A reading of the first count in plaintiff's complaint reveals that the claim set forth therein arose from defendant's failure to pay plaintiff for materials purchased and equipment rented from plaintiff. The gravamen of that action is clearly one to collect a debt. While the courts of this state have not as yet addressed this question, cases from other jurisdictions have held that where the breach is a failure to pay money due, the debtor should seek the creditor. In *Mendez v. George Hunt, Inc.*, 191 So.2d

[7] The issue arises when the breach of contract is a breach of the obligation to pay for services rendered. Most breaches of contract result in an obligation to pay damages, *e.g*. breach of warranty, failure to perform, inadequate performance. Here, the alleged breach itself is failure to pay an amount due under the contract for services rendered.

[8] Apparently, the court believed the "free on board" ("f.o.b.") designation indicated that the materials were delivered to defendant in Memphis and title to the materials passed to defendant in Memphis.

> 480 (Fla. Dist. Ct. App.1966), it was stated: "In such cases the default and breach consist of the failure to pay the money and the cause of action accrues where the default occurred, which would necessarily be in the county where the creditor resides." *Id.* at 481 (citations omitted). *See also Lucas Enterprises v. Paul C. Harmon Co.*, 273 Pa.Super. 422, 417 A.2d 720, 721 (1980).
>
> The general terms and conditions that constitute a part of the sublicense agreement state that the material sold by plaintiff to defendant was priced f.o.b. Memphis. The sublicense agreement provides that all notices were to be given to plaintiff at its offices in Memphis, Shelby County. The affidavit filed by an officer of plaintiff in opposition to the motion to dismiss stated that accounts owing plaintiff by defendant were due and payable in Shelby County. There were no countervailing affidavits in any way contradicting these assertions. Accordingly, we hold that the venue for the first count of plaintiff's complaint lies in Shelby County, the resident county of the creditor, and that the chancellor was in error in dismissing the complaint as to this count.

Id. at 200-01.

As for the second count alleging breach of contract, while admittedly the venue for a breach of contract claim would be Rutherford County, the court in *Insituform* found venue to be proper in Shelby County under a joinder of claims rationale. *Id*. at 201-202. Interestingly, the court in *Insituform* did not look to the entire complaint to determine the "gravamen" of the action but looked to the first count only and then joined the breach of contract claim.

> We do not find the venue issue presently before us as having been addressed by the appellate courts of this state. However, we are of the opinion that efficient judicial administration and public policy favoring the avoidance of a multiplicity of suits dictate that we hold that venue as to the second count would lie in Shelby County as well. This is in keeping with the text authorities and the decisions of many other jurisdictions on this subject.
>
> . . .
>
> Although not controlling, we think our holding here is bolstered by the fact that the money judgement sought against the defendant for the debt arises out of the same sublicense agreement that plaintiff claims to have been breached by defendant. Once the courts of Shelby County have taken jurisdiction of plaintiff's claim against the defendant for debt, which it clearly has a right to do, it appears to us to be pure folly to require defendant to defend against that action in Shelby County while causing plaintiff to prosecute its suit for royalties under the license agreement in another county.

Id. at 201-202.

The court in *Insituform* thus found venue to be in Shelby County for both counts of the complaint.

Another section of this court examined the issue under other circumstances in *Resource Company, Inc. v. Bristol Hospital*, No. 01-A-01-9412-CH-0056, 1995 WL 422468 (Tenn. Ct. App. July 19, 1995). The plaintiff and defendant hospital entered into an agreement whereby the hospital would pay plaintiff a fee for each doctor the hospital hired through plaintiff's recruiting efforts. The plaintiff had its principal office in Williamson County while the defendant hospital was located in Sullivan County. *Id.*, at *1.

The plaintiff sued the hospital in Williamson County alleging it had provided contractual services for which the defendant hospital refused to pay. *Id*. The trial court granted the defendant hospital's motion to dismiss due to improper venue, and the plaintiff appealed. *Id*.

Again, the issue on appeal was where the cause of action arose in order to establish venue under Tenn. Code Ann. § 20-4-101(a). On appeal, plaintiff argued that the cause of action arose where plaintiff was located, Williamson County, because payment for its services should have been made there. *Id*. The agreement did not address venue and did not specify where payment was to be made. The parties disputed whether the amount was owed. *Id*.

The court first determined that where the lawsuit involves collection of money due on the sale of goods, venue generally lies where payment is due and, unless otherwise provided, payment is due at the place of delivery. *Id*. "Thus, the proper venue for an action to collect the balance due on a contract of sale is in the buyer's county. *See Communications Systems, Inc. v. Tennessee Electric Company, Inc.*, Court of Appeals, filed in Jackson, August 25, 1981; *Woodcraft, Inc. v. The Great Smokey Mountain Furniture Co.*, Court of Appeals, filed in Knoxville, November 20, 1979." *Id*., at *1.

As the court in *Resource Company* pointed out, under the Uniform Commercial Code, venue for an action to collect a contract balance for the sale of goods is not the creditor's county but instead is where the payment is due. Absent a contrary agreement, payment is deemed due under the UCC where the goods are delivered. The court in *Resource Company* noted that since *Insituform* included the sale of goods, then the line of cases setting venue in the buyer's county would control, except that in *Insituform* the parties had an agreement to the contrary, *i.e.*, that payment would be due and payable in Shelby County, thus placing venue there.

> In *Insituform of N. America v. Miller Insituform*, 695 S.W.2d 198 (Tenn. App. 1985), an action to collect an account arising out of contract, this court held that the cause of action arose in the creditor's county. . . . In *Insituform*, although the debt partially arose out of a sale of goods, and would be subject to the rule in *Communications Systems, Inc. and Woodcraft*, the court noted that the materials were sold f.o.b. Memphis and that an officer of the plaintiff corporation filed an uncontroverted affidavit that payment of the accounts was due in Shelby County.

> We think the narrow *Insituform* rule does not cover the facts in this case. In *Insituform* the claim was for a liquidated debt in which the record showed that the defendant was to make payment in Shelby County. Here, the record is silent on that crucial fact and we decline to adopt a rule saying as a matter of law that payment in all actions based on contract is due at the creditor's residence.
>
> Instead, we hold that in this case the breach occurred where the defendant failed or refused to take the steps necessary to fulfill its part of the contract, the payment of the claim. The only place where that could have occurred is Sullivan County. Therefore, venue was properly assigned to that county.

Id., at *1-2.

In *Resource Company*, the court first looked to where payment was due to determine venue. Since the record was silent on that fact, the court then determined venue rested where the defendant failed to do what was necessary to comply with the contract, *i.e.*, pay. Since the defendant hospital was in Sullivan County, then venue was proper there.

Likewise, in *Jonesboro Drywall & Plaster Co. v. Kirby*, No. 03A01-9508-CH-00276, 1995 WL 697901 (Tenn. Ct. App. Nov. 28, 1995), this court found the applicability of *Insituform* to be limited to its particular set of facts.

In *Jonesboro Drywall*, plaintiff and defendant contracted to work together on a subcontract to install an insulation system in a home in Boone, North Carolina. Plaintiff was to provide the supplies and materials while defendant would provide the labor. *Id*., at *1. Plaintiff's principal place of business was in Washington County, while defendant was in Hamilton County. Defendant apparently did not complete the project, so plaintiff sued in Washington County to recover plaintiff's consequential expenses for hiring a third party to complete the work, reimbursement for materials supplied defendant, and reimbursement for plaintiff's completion expenses. *Id*. Defendant moved to dismiss for lack of subject matter jurisdiction and venue. The trial court granted the dismissal based on subject matter jurisdiction. *Id*.

On appeal, this court found that Tennessee had subject matter jurisdiction, but affirmed the dismissal based upon improper venue. Since the matter was based upon contract, then the action was transitory and governed by Tenn. Code Ann. § 20-4-101. *Id*., at *1. The court declined to rely on *Insituform*:

> Plaintiff argues that Washington County, where its principal place of business is located, is the county in which the cause of action arose and for this proposition relies on *Insituform of North America v. Miller Insituform*, 695 S.W.2d 198 (Tenn. App.1985). In *Insituform*, the court found that venue was proper in Shelby County where plaintiff's principal place of business was located. The factors that led the court to that conclusion were: all notices pursuant to a licensing agreement were to be given to the plaintiff in Shelby County, material sold was priced F.O.B. Memphis,

> and accounts owing were due and payable in Shelby County. *Id*. Here, while plaintiff has its principal place of business in Washington County, the contract was signed in Boone County, North Carolina, and the work was to take place there and all materials for the project were purchased in North Carolina. The contract makes no reference to any payments or activities that are to take place in Washington County. Unlike *Insituform*, the plaintiff's principal place of business does not serve as a focal point for the subcontract.
>
> Since the cause of action arose in North Carolina, the only Tennessee forum is in the county where the defendant resides or is found. Tenn. Code Ann. § 20-4-101. For purposes of venue, the "residence" of a corporation is its principal place of business. *Five Star*. Accordingly, the appropriate venue is Hamilton County, Tennessee, where defendant has its principal place of business.

Id., at *2.

Unlike *Resource Company*, the allegations in *Jonesboro Drywall* were not about a defendant's failure to pay a contract amount owed for goods and services rendered, but instead pertained to defendant's alleged breach or failure to perform its contract obligations in North Carolina. Failure to make a payment was not the breach -failure to perform was the breach, and damages were requested as a result. Clearly, that breach occurred in North Carolina and the cause of action arose there.[9]

In 2004 this court had two opportunities to discuss *Insituform*. First, in *TPC Facility Delivery Group v. Lindsey*, No. M2002-01909-COA-R3-CV, 2004 WL 193051 (Tenn. Ct. App. Jan. 30, 2004) the court further retreated from *Insituform.*

In *TPC Facility*, plaintiff contracted with defendants to provide preliminary architectural and construction services for a proposed medical building. *Id*., at *1. If the two parties chose to proceed with the project beyond the preliminary phase then the contract provided that an additional agreement would be executed. Plaintiff's principal place of business was in Williamson County. *Id*. There was no common county for the defendants. *Id*., at *3. The contract was silent on venue and on where the payments were to be made. *Id*., at *1. The project was slated to be built in Tullahoma, Coffee County, Tennessee.

Plaintiff sued in Williamson County seeking payment for additional services beyond those described in the parties' contract. *Id*. Plaintiff's complaint sought recovery alleging (1) the additional services as an extension of their existing contract, (2) oral contract, or (3) an implied-in-fact contract. Plaintiff's alternate grounds of recovery included breach of contract and unjust enrichment. We note these claims are similar to those brought herein by Nickell.

---

[9] The court noted that the record was silent about where the payments were to be made. Since the complaint was about a failure to perform contract obligations and not about failure to pay under a contract, where the contract payments were to be made was not determinative.

The defendants filed motions to dismiss based on improper venue. There was no dispute that this was a transitory action governed by Tenn. Code Ann. § 20-4-101 and that the contract was silent on venue. The trial court granted the motion since "it appeared that the proper venue for the action was Coffee County where the project giving rise to the complaint was to be built and where virtually all of the defendants reside, there being no defendant residing in Williamson County."

The sole issue on appeal in *TPC Facility* was whether the trial court correctly ruled venue was in Coffee County. Plaintiff argued the action was one to collect a debt and, consequently, the cause of action "necessarily arose in the county of the creditor," citing *Insituform*, *Id.*, at *4. This court cited *Resource Company* for the proposition that Tennessee courts have declined to hold that venue on an action to collect payments due under a contract is, as a matter of law, at the creditor's residence. *Id*.

This Court found the trial court had correctly decided that venue was in Coffee County and not in Williamson County. First, we did not believe the primary claim in the complaint stated a cause of action to collect a debt. *Id*. at 5. The complaint alleged a breach of a covenant to pay seeking unspecified monetary damages. *Id*.

> While finding the complaint stated a cause of action to collect a debt would necessarily require that venue be proper in the county of the creditor, this court has declined to adopt a rule saying as a matter of law that payment in all actions based on contract is due at the creditor's residence.

Id.

Second, the factors that led the court in *Insituform* to conclude that payment on a liquidated debt were due in the creditor's county- notices to Shelby County, materials sold were priced F.O.B. Memphis, and the accounts were due and payable in Shelby County - were not present in *TPC Facility*.

The court concluded that Coffee County, not Williamson County, was the "focal point" of the dispute in *TPC Facility*. *Id*. The agreement was negotiated and entered into in Coffee County. *Id*. The subject matter was services to build a project in Coffee County, and much of the performance "necessarily had to be done on the site in Coffee County." *Id*.

> Based on these facts, the present case is closely analogous to *Jonesboro* and leads to the conclusion that the cause of action against [defendant] arose, for purposes of venue, in Coffee County. In this instance, the breach of contract occurred, and the cause of action arose, when [defendant] allegedly failed or refused to take the steps necessary to fulfill its part of the contract, *i.e.* the payment of the claim. As in *Resource*, the failure or refusal to make payment took place where defendant had its business, and accordingly, venue would lie in Coffee County.

Id.

The last stop on our saunter down venue lane is *Tinker-Watkins Sand and Gravel, Inc. v. Parsons*, No. W2003-02048-COA-R3-CV, 2004 WL 689880 (Tenn. Ct. App. Mar. 31, 2004). The facts in *Tinker-Watkins* are quite simple. Defendant placed an order to have plaintiff deliver gravel for his driveway for which defendant was to pay $317.31. *Id.*, at *1. When plaintiff delivered the gravel, defendant was not satisfied with the quantity delivered and refused to honor the oral contract and pay. *Id*. Plaintiff's business was located in Decatur County.[10] Plaintiff filed a civil warrant in Decatur County claiming defendant owed $317.31. Defendant filed a motion to dismiss for improper venue which was denied.

On appeal, the court recognized that the decision in *Insituform* had been narrowed by the cases discussed previously herein. The court in *Tinker-Watkins* rejected the notion that *Insituform* applicability rested in large part on whether the contract provided payment was due and payable at the creditor's business.

> While the instant case is similar to *Resource, Jonesboro Drywall*, and *TPC Facility* in that there is no evidence that the contract specified a place for payment, it is distinguishable from these cases and more analogous to *Insituform* because it involves a claim for the collection of a debt in a specific amount. . . . Because the gravamen of Plaintiff's action is the collection of a debt in a specific amount, we hold that the cause of action in this case arose out of Plaintiff's county and, therefore, the trial court did not err when it determined that Decatur County was a proper venue.

Id.

We do not believe, however, that whether a plaintiff asks for a specific amount in its complaint governs venue. The question under these cases is where cause of action arises. While the fact that a specific amount is requested may be indicative of an action to collect a debt, it is not determinative of venue.

IV. ANALYSIS

With the foregoing in mind, we now turn our attention to the question at hand, namely what is Nickell's cause of action and where did the cause of action arise. Considering the facts presented by Nickell at trial, we believe the only conclusion that may be drawn is that venue for Nickell's claims is in Williamson County.

The uncontradicted proof introduced by Nickell at the hearing shows Nickell's claims to be much more complicated than collection of the simple indebtedness as alleged in its Amended Complaint. In determining venue, regardless of the allegations, "we must view the lawsuit in light of what it really is." *Mid-South Milling*, 521 S.W.2d at 588.

---

[10]The opinion is not clear where defendant resided or could be found but appears to be Shelby or Tipton County.

After review of the record and the proof introduced by Nickell at trial, we conclude that Nickell's claim was not to recover a debt but, rather, to either (1) extend an existing contract and/or establish the terms of an oral contract, so that the obligation to pay is established or (2) rely on alternative equitable grounds for recovery. Nickell's first hurdle to recovery was whether there existed an obligation by Developers to pay. If the obligation to pay and the amount due were not at issue, then the matter may have been debt collection. However, that was not the situation here. For example, on the Rogersshire project, Nickell attempted to recover for the price of rock it erroneously omitted from its bid. While Nickell claims Developers ultimately agreed orally to pay this amount, Nickell's claim is hardly simple debt collection because the very existence of the debt is at issue.

Another basis upon which Nickell seeks payment on the Rogersshire project is Developers' alleged failure to adequately prepare the site. Nickell must prove developers breached their obligation to prepare the site before Nickell can recover, *i.e.*, before it establishes a debt owed. Again, the proof required to substantiate this claim goes far beyond debt collection. In order for Nickell to be successful, it must first show an obligation to pay exists by providing a myriad of facts showing, *e.g.*, contract formation, that Developers breached its obligation to prepare the site, and that Nickell's admitted errors do not bar recovery. The gravamen of Nickell's claims is not debt collection but, rather, whether Developers have an obligation to pay Nickell in the first instance, under contract law or based on quantum meruit. This is not a simple collection action on an account receivable in contract. Therefore, under *Insituform* and its progeny, the cause of action was not for collection of a debt, and venue did not arise in Maury County.

Alternatively, even if one were to agree with Nickell and the trial court characterizing Nickell's action as a debt collection, venue would nevertheless still be Williamson County. As discussed earlier, in an action to collect a debt, venue lies where the debt is to be paid. Tennessee courts have refused to hold that as a matter of law a contract payment is due in the creditor's county. The proof introduced by Nickell at trial showed that payments were not made at the Nickell's place of business in Maury County, but were generally made in Williamson County. Therefore, if one were to conclude the action is to collect a debt, since the payments were made in Williamson County, then the cause of action arose and venue resides in Williamson County.

Finally, Nickell's proof failed to show that Maury County had any role in the parties' dealings. Both projects were in Williamson County. All the work performed by Nickell on these projects was done in Williamson County. The four meetings between the parties about Nickell's request that Developers pay for the omitted bid items occurred in Williamson County. Mr. Nickell testified that most of the payments Nickell received for these projects was paid to Nickell in Williamson County. The Developers resided in Williamson County. There is no doubt that Williamson County was the focal point of this contract.

V.

For these reasons the judgment of the trial court is reversed and the matter is dismissed for improper venue. Costs of appeal are taxed to Nickell, Inc. for which execution may issue if necessary.

_____

PATRICIA J. COTTRELL, JUDGE